

201 KAR 45:150. Complaint procedures.

RELATES TO: KRS 309.335

STATUTORY AUTHORITY: KRS 309.331, 309.335

NECESSITY, FUNCTION AND CONFORMITY: KRS 309.331 requires the board to promulgate administrative regulations for the administration and enforcement of KRS 309.330 to 309.339. This administrative regulation provides for the complaint procedures to be used by the board in the enforcement of those statutes and administrative regulations promulgated thereunder.

Section 1. Definitions. (1) "Board" is defined by KRS 309.325(1).

(2) "Charge" means a specific allegation contained in any document issued by the board alleging a violation of a specified provision of KRS 309.325 through 309.339.

(3) "Complaint" means a written complaint alleging a violation of KRS 309.325 through 309.339.

(4) "Complainant" means a person who files a complaint pursuant to this administrative regulation.

(5) "Formal complaint" means a formal administrative pleading authorized by the board that establishes a charge against a licensee or applicant and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B.

Section 2. Complaints. A complaint:

(1) Shall be submitted by completing a "Complaint Form", Form DE-06 and signed by the person offering the complaint; or

(2) May be filed by the board based upon information in its possession.

Section 3. Receipt of Complaints. (1) A copy of the complaint shall be mailed to the individual named in the complaint along with a request for that individual's response to the complaint.

(2) The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response to the board.

(3) Upon receipt of the written response of the individual named in the complaint, a copy of the response shall be sent to the complainant.

(4) The complainant shall have seven (7) days from receipt to submit a written reply to the response to the board.

Section 4. Initial Review. (1)(a) After the receipt of the complaint and the expiration of the period for the individual response, the board shall consider the individual's response, complainant's reply to the response, and any relevant material available.

(b) The names of the individuals and other identifying information shall be redacted to provide anonymity.

(c) The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) If the board determines before formal investigation that a complaint is without merit, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a complaint warrants a formal investigation, it shall conduct a formal investigation into the matter.

Section 5. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the board shall determine whether there has been a prima facie violation of KRS 309.325 to 309.339 or the administrative regulations promulgated thereunder. If so, a formal complaint shall be filed.

(2) If the board determines that a complaint does not warrant the issuance of a formal complaint, it shall:

(a) Dismiss the complaint; and

(b) Notify the complainant and respondent of the board's decision.

(3) If the board determines that a violation has occurred but is not serious, the board shall issue a written admonishment to the license holder.

(a) A copy of the written admonishment shall be placed in the permanent file of the license holder.

(b) The license holder shall have the right to file a response in writing to the admonishment within thirty (30) days of its receipt and may have it placed in the license holder's permanent file.

(c) Alternatively, the license holder may file a request for a hearing with the board within thirty (30) days of the admonishment.

(d) Upon receipt of the request, the board shall set aside the written admonishment and set the matter for hearing pursuant to the provisions of KRS Chapter 13B.

(4)(a) If the board determines that a complaint warrants the issuance of a formal complaint against the license holder, the board or its counsel shall prepare a formal complaint that states clearly the charge or charges to be considered at the hearing.

(b)1. The formal complaint shall be reviewed by the board and, if approved, signed by the chair and served upon the individual as required by KRS Chapter 13B.

2. The formal complaint shall be processed in accordance with KRS Chapter 13B.

Section 6. Settlement by Informal Proceedings. (1) The board, through counsel, may enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) An agreed order or settlement reached through this process shall be approved by the board and signed by the chair and the individual who is the subject of the complaint.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 7. Incorporation by Reference. (1) "Complaint Form", Form DE-06, 06/2013, is incorporated by reference.

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